

Suite 401 DNA Building
 238 Archbishop Flores St.
 Hagåtña, Guam 96910



FAX

To:	Ms. Emily G. Gumataotao Supply Management Administrator University of Guam UOG Station Mangilao, Guam 96923 Phone: (671) 735-2925 Fax: (671) 735-3010 Email: eggumataotao@triton.uog.edu ; uog.bids@triton.uog.edu	From:	Benjamin J.F. Cruz Public Auditor Office of Public Accountability
	Mr. Anthony R. Camacho, Esq. Legal Counsel University of Guam UOG Station Mangilao, Guam 96923 Email: arcamacho@triton.uog.edu	Pages:	8 (including cover page)
CC:	Mr. Seth Forman Roberts Fowler & Visosky LLP Attorneys for Appellant All Business Enterprises Corp. 865 South Marine Corps Drive, Ste. 201 Phone: (671) 646-1222 Fax: (671) 646-1223 Email: Forman@guamlawoffice.com	Date:	February 8, 2022
		Phone:	(671) 475-0390 x. 204
		Fax:	(671) 472-7951

Re: OPA-PA-22-002 Notice of Receipt of Appeal

- For Review**
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Thank you,
 Jerrick Hernandez, Auditor
jhernandez@guamopa.com

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OFFICE OF PUBLIC ACCOUNTABILITY

Suite 401 Pacific News Building, 238 Archbishop Flores St., Hagåtña, Guam 96910
Phone: (671) 475-0390 / FAX: (671) 472-7951

February 8, 2022

Ms. Emily G. Gumataotao
Supply Management Administrator
University of Guam
UOG Station
Mangilao, Guam 96923

VIA FACSIMILE: (671) 735-3010

Re: Notice of Receipt of Appeal – OPA-PA-22-002

Dear Ms. Gumataotao,

Please be advised that All Business Enterprises Corp. (hereinafter referred to as “ABE Corp.”) filed an appeal with the Office of Public Accountability (OPA) on February 7, 2022, regarding the University of Guam’s (UOG) award for the Purchasing of HVAC Equipment (UOG-IFB-21-17). OPA has assigned this appeal case number OPA-PA-22-002.

Immediate action is required of UOG pursuant to the Rules of Procedure for Procurement Appeals, found in Chapter 12 of the Guam Administrative Regulations (GAR). Copies of the rules, the appeal, and all filing deadlines are available at OPA’s office and on its website at www.opaguam.org. The first five pages of the notice of appeal filed with OPA is enclosed for your reference.

Please provide the required notice of this appeal to the relative parties with instructions that they should communicate directly with OPA regarding the appeals. You are also responsible for giving notice to the Attorney General or other legal counsel for your agency. Promptly provide OPA with the identities and addresses of interested parties and a formal entry of appearance by your legal counsel.

Pursuant to 2 GAR, Div. 4, Ch. 12, §12104(3), the submission of one complete copy of the procurement record for the procurement solicitation above, as outlined in Title 5, Chapter 5, §5249 of the Guam Code Annotated is required no later than **Tuesday, February 15, 2022**, five work days following this Notice of Receipt of Appeal. We also request one copy of the Agency Report for each of the procurement solicitations cited above, as outlined in 2 GAR, Div. 4, Chap. 12, §12105, by **Tuesday, February 22, 2022**, ten work days following receipt of this notice.

When filing all other required documents with our office, please provide one original and one copy to OPA (electronic filings will be acceptable), and serve a copy to ABE Corp. Although the Guam Procurement Law and Regulations require only one copy of the procurement record, OPA respectfully asks that UOG provide one original and one electronic file of the said record, which

will be distributed as follows: Copy-1: Master File; and Copy-2: Public Auditor and/or Hearing Officer.

Thank you for your prompt attention to this matter. Please contact Jerrick Hernandez at 475-0390 ext. 204 or jhernandez@guamopa.com should you have any questions regarding this notice.

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin J.F. Cruz". The signature is stylized and cursive.

Benjamin J.F. Cruz
Public Auditor

Enclosure: First Five Pages of the Notice of Appeal – OPA-PA-22-002

Cc: Seth Forman, Esq. ABE Corp.'s Attorney

Seth Forman
Roberts Fowler & Visosky LLP
865 South Marine Corps Drive, Ste. 201
Tamuning, Guam 96913
Telephone (671) 646-1222
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OFFICE OF PUBLIC ACCOUNTABILITY
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DATE: FEB. 7, 2022
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FILE NO OPA-PA: 22-002

Attorneys for Appellant
All Business Enterprises Corp.

OFFICE OF PUBLIC ACCOUNTABILITY

PROCUREMENT APPEAL

In the Appeal of)
All Business Enterprises Corp.,)
Appellant.)
_____)

NOTICE OF APPEAL
Docket No. OPA-PA _____

Appellant Information:

Appellant's address, telephone number, facsimile number, and e-mail address are as follows:

All Business Enterprises Corp.
Mailing address: P.O. Box 8140
Tamuning Guam 96931
Physical address: 153 East Harmon Industrial Park Rd.
Unit B
Harmon, Guam 96931

Telephone No. (671) 646-0588/3346
Facsimile No. (671) 646-0589
E-mail nbangayan@jbmodernotech.com

Contact information for appellant's counsel is set forth above the caption.

Appeal Information:

- A) Purchasing Agency: University of Guam ("UOG")
- B) Invitation for Bid No.: UOG IFB B21-17 (Purchasing of HVAC Equipment)

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C) The denial of protest being appealed was made on January 25, 2022, by the President of UOG. The denial is attached as "Exhibit 6."

D) Appeal is made from a denial of a protest. This appeal is brought pursuant to 5 GCA §5425(e).

E) Name of competing bidders known to appellant: Tony's Workshop, and JWS Refrigeration and Air Condition Ltd. ("JWS".)

Form and Filing:

1. All Business Enterprises Corp. ("ABEC") is appealing the denial of a protest it made regarding UOG IFB B21-17.

This procurement was for purchasing of HVAC Equipment.

On December 20, 2021, All Business Enterprises Corporation ("ABEC") submitted a protest of the University of Guam's rejection of ABEC's bid and the award to Tony's Workshop for UOG IFB B21-17: Purchasing of HVAC Equipment. A copy of the protest is attached hereto as "Exhibit 1." A copy of the notice of rejection of ABEC's bid dated December 7, 2021 is attached hereto as "Exhibit 1-A". A copy of the notice of award to Tony's Workshop dated December 7, 2021 is attached hereto as "Exhibit 1-B".

The basis for the protest is that the bids submitted by the two bidders who finished ahead of ABEC, Tony's Workshop and JWS Refrigeration and Air Condition LTD ("JWS") were nonresponsive. ABEC had made a Sunshine Act request for the Tony's Workshop and JWS bid submittals including the ACCU Unit Brochures on December 6, 2021, and followed up on December 7, 2021 and December 9, 2021. See attached "Exhibit 1-C", which includes all three e-mails about the Sunshine Act request. The University did not respond until December 13, 2021. The response is attached as "Exhibit 1-D." ABEC was unable to view the requested documents and learn of the basis for this protest until December 14, 2021.

One major requirement of UOG IFB B21-17 was Factory Phenolic Coating. See excerpts from the bid requirements in "Exhibit 2". The description for six of the units included in the Tony's Workshop bid did not include Factor Phenolic Coating. Please see the attached

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documents which show no indication of Factory Phenolic Coating, thus confirm that the bid from Tony's Workshop was nonresponsive:

1. Unit Report for RFK Building First Floor Main Entrance 112321; Ref: page 29 of 178 ("Exhibit 1-E")
2. Unit Report for 7.5 RFK Building First Floor AV Room 112321; Ref: page 43 of 178 ("Exhibit 1-F")
3. Unit Report for 7.5 RFK Building First Floor Office 112321; Ref: page 56 of 178 ("Exhibit 1-G")
4. Unit Report for PIP (GLE) Second Floor 112321; Ref: page 69 of 178 ("Exhibit 1-H")
5. Unit Report for 20 Science Building Third Floor 112321; Ref: page 106 of 178 ("Exhibit 1-I")
6. Unit Report for Lecture Hall Auditorium 112321; Ref: page 143 of 178 ("Exhibit 1-J")

This was not a mere oversight. Tony's Workshop indicated on its submittals for several other units that it was providing the coating. See "Exhibit 3" (pages from Tony's Workshop bid that show "Copper E-Coat Fin/Copper Tube.")

If the bid from Tony's Workshop is rejected as being nonresponsive, that does not mean that JWS should be awarded the contract. The bid from JWS was even more nonresponsive. In addition to requiring Factory Phenolic Coating, the bid requirements also stated that the procurement is subject to the Buy America Act. See "Exhibit 4", excerpts from UOG's question and answer sheet for this bid.

The Technical Report in the submission from JWS has no indication of Factory Phenolic Coating for any of the units. See attached "Exhibit 1-K".

In addition, the shop drawings in the JWS bid show that are included in "Exhibit 1-K" show that the units are to be manufactured by "DB-Dunham-Bush Industries SDN BHD". Exhibit 1-K. Dunham-Bush is a Malaysian company, not an American company. Attached as "Exhibit 1-L" and "Exhibit 1-M" are copies of on-line information from Bloomberg and Dunn & Bradstreet confirming that Dunham-Bush is a Malaysian company.

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In conclusion, both the Tony's Workshop and the JWS bids are nonresponsive. Therefore UOG IFB B21-17: Purchasing of HVAC Equipment should have been awarded to the sole responsive bidder, All Business Enterprises Corporation.

When UOG failed to respond to ABEC's protest within a month, ABEC delivered a letter to UOG on January 24, 2022 requesting a response. "Exhibit 5." On January 25, 2022, UOG issued its denial of ABEC's protest. "Exhibit 6." The gist of UOG's position seems to be that (1) Tony's Workshop could omit any reference to any intent to apply the required coating of any sort in its bid and provide documentation after an award, and (2) since UOG therefore did not deem the bid from Tony's Workshop non-responsive, there was no need to address issues pertaining to JWS. ABEC disagrees with UOG's position on these matters and will respond in greater detail at such time as the OPA directs.

2. ABEC requests that the Office of Public Accountability (1) overrule GCC's denial of ABEC's protest as to both Tony's Workshop and JWB, (2) remand the matter to UOG for further action in accordance with the OPA's ruling.

3. Supporting documents are attached hereto as exhibits which correspond with the Exhibit numbers 1 through 6 as set forth above. Most supporting documents were attached to ABEC's protest and identified by letter. In order to avoid duplication, the protest has been attached as "Exhibit 1" and exhibits thereto are identified as "Exhibit 1-A", "Exhibit 1-B", etc. Additional supporting documents attached hereto are identified as "Exhibit 2" through "Exhibit 6".

Declaration regarding court action:

ABEC does hereby confirm that to the best of its knowledge no case or action concerning the subject of this Appeal has been commenced in court. The undersigned party agrees to notify the Office of Public Accountability within 24 hours if court action commences regarding this Appeal or the underlying procurement action.

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Respectfully submitted,

ROBERTS FOWLER & VISOSKY LLP

Date: February 3, 2022

By: Seth Forman

SETH FORMAN

Attorneys for Appellant All Business Enterprises Corp.
865 South Marine Corps Drive, Ste. 201
Tamuning, Guam 96913
Telephone (671) 646-1222
Facsimile (671) 646-1223
E-mail: Forman@guamlawoffice.com

VERIFICATION

Tamuning, Guam) ss:

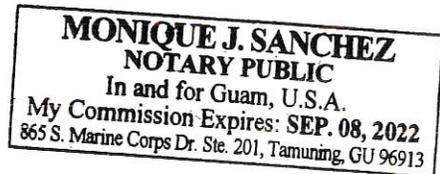
I, Nelia F. Bangayan, being first duly sworn, do hereby depose and state that I am the President of Appellant All Business Enterprises Corp. and that I have read the foregoing Notice of Appeal and it is true of my own knowledge except as to those matters alleged upon information and belief and as to those matters, I believe them to be true.

Dated this 7th day of February, 2022.

[Signature]
NELIA F. BANGAYAN

SUBSCRIBED AND SWORN to before me this 7th day of February, 2022.

[Signature]
Notary Public





Jerrick Hernandez <jhernandez@guamopa.com>

OPA-PA-22-001 Notice of Receipt of Appeal

Jerrick Hernandez <jhernandez@guamopa.com>

Wed, Jan 26, 2022 at 3:56 PM

To: "Carmen T. Charfauros" <ctcharfauros@gdoe.net>, "James L.G. Stake" <jlgstake@gdoe.net>

Cc: Legal Admin <legal-admin@gdoe.net>, GPE INC <guampacific@gmail.com>

Hafa Adai,

Please see attached Notice of Receipt of Appeal for OPA-PA-22-001. This email will serve as an official notice in lieu of a transmittal via Fax.

Please confirm receipt of this email and the attached document. Thank you.

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Regards,

Jerrick J.J.G. Hernandez, MA, CGAP, CICA
Auditor
Office of Public Accountability – Guam
www.opaguam.org
Tel. (671) 475-0390 ext. 204
Fax (671) 472-7951

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